IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 6080 of 2006(W)

OS.584/2001 of MUNSIFF COURT, MUVATTUPUZHA

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PETITIONER:

K.V.RAGHUNATHAN, KUNNEL HOUSE,
RAMAMANGALAM, MARADY VILLAGE.

BY ADV. SRI.BIJU ABRAHAM

RESPONDENTS:

1. K.V.RAJKUMAR, KUNNEL HOUSE,
   RAMAMANGALAM KARA, MARADY.

2. SUDHAKARAN, RAGASUDHAYIL HOUSE,
   KANIMANGALAM, THRISSIVAPEROOR.

BY ADV. SRI.M.C.GOPI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 6080/06

PETITIONER'S EXHIBITS:

EXT. P1 **TRUE COPY OF THE SUIT FILED BY THE PETITIONER AS OS 584/01 BEFORE THE MUNSIFF'S COURT, MUVATTUPUZHA.**

EXT. P2 **TRUE COPY OF THE ORDER DT. 12.12.05 IN IA 3040/05 IN OS 584/01 ON THE FILE OF THE MUNSIFF'S COURT, MUVATTUPUZHA**

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 6080 of 2006 W

JUDGMENT

The petitioner is the plaintiff in O.S.No. 584/01 on the file of the Munsiff's Court, Muvattupuzha. The suit is one for demarcation and fixation of boundary and for an injunction restraining the defendants from destroying the pathway to the property allotted to the petitioner/ plaintiff under Partition Deed No.6290/94 of Sub Registry Office, Muvattupuzha.

2. The grievance of the petitioner is that the court below dismissed the commission application filed as I.A.No.3040/05 for the reason that the suit was once dismissed for default and was being restored; that it is thereafter that the application for issue of a Commission was filed and that it will show that even the restoration application was filed only for the purpose of filing a Commission application after the

restoration of the suit and that it lacks bona fides. Counsel for the respondents submits that he has no objection in Commission application being allowed. However, I have no doubt that there is no lack of bona fides in applying for issue of a Commission, especially when the suit is one for fixation of boundary as well.

3. In the result, in reversal of Exhibit P2 order, I allow I.A.No.3040/05. The court below shall fix the Commission bata, Surveyor's bata, etc. in consultation with both the parties in the matter of execution of the order.

This writ petition is disposed of as above.

19th March, 2007 (K.P.Balachandran, Judge)

tkv